345; *Shenandoah Valley R. R. Co.* v. *Dunlop,* 86 Va. 346. But this rule is subject to modification, *French* v. *Boston Nat. Bank,* 179 Mass. 404, as in cases where the original quality lacking has been subsequently supplied. *Woodruff* v. *Woodruff,* 44 N. J. Eq. 349. The decision in the principal case bears analogy to this modification, for although the wife's signature was lacking from the original contract, this had been supplied by the signature by her on the deed tendered the vendee. There are decisions refusing to recognize such modification of the general rule. *Luse* v. *Deitz,* 46 Iowa, 205; *Harris* v. *Mott,* 14 Beav. 169; *Beard* v. *Linthicum,* 1 Md. Ch. 345. It is difficult to distinguish these decisions from those announcing the doctrine that, while it is true that the vendor must be ready and able to convey a marketable title to the vendee, it is not necessary that he possess that title at the time the contract is entered into; that he is only required to be able to convey it by the time the decree is entered. *Maryland Const. Co.* v. *Kuper,* 90 Md. 529; *Mason* v. *Caldwell,* 5 Gilm. 796. This line of reasoning influenced the majority of the court in arriving at its conclusion, for it says that, although the contract could not have been enforced against the wife, because she had not signed it, *Ebert* v. *Arends,* 190 Ill. 221; *Cowan* v. *Kane,* 211 Ill. 572, it could be enforced against the husband for the dower interest was only an incumbrance, which was removed by the wife's joining in the deed, hence there was no lack of mutuality of remedy and the vendor could specifically enforce the contract against the vendee.

TRADE-MARKS—INJUNCTION—CLEAN HANDS.—Plaintiff, a stock corporation, manufactures and sells certain proprietary remedies under the name of Dr. Pierce's remedies. It also incidentally conducts a hospital and engages in the practice of medicine. It seeks to enjoin the defendant, whose name is Pierce, from using his name in the sale of similar remedies of his own manufacture. The defendant claims that since the laws and decisions of New York make it illegal for a stock corporation to practice medicine and conduct a hospital, the plaintiff has no standing in a court of equity and the injunction should not be issued. *Held,* by a divided court, that the defendant should be enjoined from the use of the word Pierce in connection with his remedies. *World's Dispensary Medical Association* v. *Pierce* (N. Y. 1911) 96 N. E. 738.

The general rule that in order to obtain relief the plaintiff must come into equity with clean hands is too well known to require citation. This rule is applied in trade-mark cases where the plaintiff is shown to have made material misrepresentations with respect to the article or the mark involved. *Uri* v. *Hirsch, et al.,* 123 Fed. 568; *Hilson Company* v. *Foster,* 80 Fed. 896. Some of the limitations on the maxim seem not so readily recognized and applied by the courts. One of these limitations is that the court will confine its inquiry into the acts of the plaintiff, to the subject-matter of the controversy, and will not go outside this subject matter in order to question the standing of the plaintiff or to impeach his conduct. *Shaver et al.* v. *Heller and Merz Company,* 108 Fed. 821; *Dering* v. *Earl of Winchelsea,* 1 Cox 318; *Lewis Appeal,* 67 Pa. 153; *Mossler* v. *Jacobs,* 66 Ill. App. 571; *Equitable Gaslight Co. Baltimore, etc. Mfg. Co.,* 65 Md. 73. In the principal case, the defendant seeks

to induce the court to inquire into the legality of the acts of the plaintiff in practicing medicine and in conducting a hospital, matters which are clearly separate and distinct from the issue before the court, which is the right of defendant to use the word Pierce as a trade-mark in competition with the plaintiff's well-known remedies. The maintenance of the hospital and the indulgence in practice are admitted to be incidental to and separate from the main business of the plaintiff which is the manufacture and sale of the remedies. However, the court is divided on the application of the limitation on the maxim which the defendant sets up and solves the question by leaving it "unconsidered and undetermined."

TRUSTEE—BREACH OF TRUST—PROFITS.—Defendant was the legal representative of a widow who, before her death, had been trustee and tenant for life of the estate of her husband. The widow had made unauthorized investments in foreign mortgages and had received a greater profit than she would have received from authorized investments. The capital had not been decreased. Plaintiffs, who are the remaindermen under the husband's will, now attempt to force the defendant to account for the excess of income actually received over that obtainable from authorized investments. *Held*, the remaindermen can not recover. *In re Hoyles* [1912] 1 Ch. D. 67.

The general rule is that any gain in the value of trust property is regarded as an accretion to the corpus of the trust estate, and belongs to the remaindermen. HILL, TRUSTEES (4th Am. Ed.) 386; *Graham's Estate*, 198 Pa. St. 216; *Hubley's Estate*, 16 Phila. (Pa.) 327; *Stewart et al.* v. *Phelps et al.*, 75 N. Y. Supp. 526. The English courts, however, have held that a trustee who has paid the excessive income to another person who was tenant for life, is not bound to repay the excess to a remainderman when the capital was intact. *Stroud* v. *Gwyer* (1860) 28 Beav. 130; *Slade* v. *Chaine* [1908] 1 Ch. 522. The principal case extends the rule of the last cases cited, and further protects the trustee and tenant for life by holding that the remainderman can not recover even when the trustee and tenant for life is the same person. The case seems to be a liberal one as far as the rights of the trustee are concerned.

WILLS—CONSTRUCTION—GIFT TO SON AT TWENTY-SIX—VESTING.—Testator bequeathed a fourth part of certain property, severed from the rest of his estate and held in trust, together with the accumulations of the income thereof, to his son "when and so soon as he shall attain the age of twenty-six years" and until that age is attained to pay to him a part of the income. *Held*, that in the absence of a gift over the testator must have intended the legacy to be vested and therefore not to be diverted on the death of the son before arriving at the age of twenty-six. *In re Nunburnholme* (*Wilson* v. *Nunburnholme*) (1911) 81 L. J. Ch. 85.

A gift to the legatee "when and so soon as" he reaches a given age standing unqualified and uncontrolled is conditional. The words "when" and "if" used in reference to an uncertain event have a similar meaning; they denote the time when the gift is to take effect. *Hanson* v. *Graham*, 6 Ves. 239, 5 GRAY'S CASES, PROPERTY, 231. Until then the legacy is contingent upon the fulfilment of the condition and liable to lapse. 30 AM. & ENG. ENCYC. LAW, 771, 774.